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SERVICE DATE – DECEMBER 23, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1066X

CENTRAL ILLINOIS RAILROAD COMPANY  
—DISCONTINUANCE OF SERVICE EXEMPTION—  
IN PEORIA COUNTY, IL

Decided: December 22, 2005

By a petition filed on September 12, 2005, Central Illinois Railroad Company (CIRY) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 6.29-mile segment of a rail line extending from milepost 8.50 to milepost 2.21 in Peoria County, IL.<sup>1</sup> CIRY also seeks an exemption from the requirements of 49 U.S.C. 10904 and 10905. Notice of the filing was served and published in the Federal Register on September 30, 2005 (70 FR 57365). We will grant the petition, subject to the standard employee protective conditions.

BACKGROUND

The segment at issue in this proceeding is part of a longer line of railroad known as the Kellar Branch that is owned by the City of Peoria (City) and the Village of Peoria Heights (Village) (jointly, the Cities). The Kellar Branch is located between milepost 1.71 and milepost 10.00, where it previously connected with the Peoria and Pekin Union Railway Company (P&PU) and now connects with Tazewell & Peoria Railroad, Inc. (TPR). The branch was abandoned by the bankrupt Chicago, Rock Island and Pacific Railroad Company (Rock Island) in 1980. See Chicago, R.I. & P.R. Co. Abandonment, 363 I.C.C. 150 (1980) (Rock Island Abandonment).

In 1984, the City, a noncarrier, acquired the abandoned line from the Rock Island Trustee and entered into an agreement with P&PU for the latter to provide service to the shippers on the line. See Peoria and Pekin Union Railway Company—Exemption from 49 U.S.C. 10901, Finance Docket No. 30545 (ICC served Sept. 24, 1984). The City subsequently transferred to the Village an ownership interest in the portion of the Kellar Branch located within the Village's corporate limits. P&PU assigned its rights under the agreement to Pioneer Industrial Railway Company (PIRY) in 1998, and PIRY obtained authority to operate the line. See Pioneer

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<sup>1</sup> In a letter filed September 29, 2005, the Pleasure Driveway and Park District of Peoria, IL, lends its support for the discontinuance.

Industrial Railway Company—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

In 2001, the City acquired additional track to the west of the Kellar Branch from the Union Pacific Railroad Company (UP). See City of Peoria, IL—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34066 (STB served July 25, 2001). Subsequently, the City filed a notice of exemption to construct a connecting track from the northwest end of the Kellar Branch to the former UP track. See City of Peoria, IL, d/b/a Peoria Heights & Western Railroad—Construction of Connecting Track Exemption—in Peoria County, IL, STB Finance Docket No. 34395 (STB served Feb. 23, 2004, and Sept. 27, 2004) (Construction Exemption).

In June 2004, the Cities filed a petition in City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878, seeking waiver of certain regulations for the filing of an adverse discontinuance application to replace PIRY on the line. Therein, the Cities stated that they had contracted with a replacement operator to provide service on the line. They also indicated that the agreement with the replacement carrier would be temporary, pending completion of the connecting track authorized in Construction Exemption, after which they planned to convert a portion of the right-of-way to a recreational trail. The Cities made it clear, however, that the three existing shippers would be served in the future either by the new connecting track or by other routings.

In response to the Cities' plan to convert part of the right-of-way into a recreational trail, PIRY filed a notice of intent to file an OFA to purchase the entire Kellar Branch. The Cities filed a motion to reject PIRY's notice, to which PIRY replied. By a decision served on September 10, 2004, the Board granted the Cities' petition for waiver and also stated that the dispute regarding PIRY's intent to file an OFA would be resolved in the decision on the merits of the adverse application for discontinuance.

On June 28, 2004, CIRY invoked the Board's class exemption procedures at 49 CFR 1150.41 to operate the Kellar Branch by filing a notice of exemption in Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL, STB Finance Docket No. 34518. The notice was served and published in the Federal Register on July 28, 2004 (69 FR 45111). PIRY filed a petition to reject CIRY's notice or to revoke its exemption or, alternatively, to stay the effectiveness of the exemption. The Board denied the petition for stay in a decision served on July 1, 2004.

In another related proceeding, PIRY filed a petition for declaratory order in Pioneer Industrial Railway Co.—Petition for Declaratory Order, STB Finance Docket No. 34636, asking the Board to institute a proceeding to determine PIRY's status on the line. In a decision served on February 23, 2005, the Board denied: (1) PIRY's petition to reject CIRY's notice or revoke

CIRY's exemption in STB Finance Docket No. 34518, and (2) PIRY's petition for declaratory order in STB Finance Docket No. 34636.

In STB Docket No. AB-878, the Cities filed an adverse application for discontinuance of PIRY's operating authority on November 16, 2004. Notice was served and published in the Federal Register on February 24, 2005 (70 FR 9125-26). PIRY filed a protest, to which applicants replied. PIRY also filed a motion to supplement its protest and a request for reconsideration of the Board's statement in the February 2005 notice that OFAs would not be entertained in this proceeding. The Cities replied in opposition. PIRY also filed a supplement to its reconsideration request.

In a decision served on August 10, 2005, the Board granted the Cities' adverse discontinuance application, authorizing the discontinuance of service by PIRY over all of the Kellar Branch. The decision also granted the Cities' motion to reject PIRY's notice of intent to file an OFA under 49 U.S.C. 10904 and denied a request by PIRY that the Board appoint a mediator. City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878 (STB served Aug. 10, 2005) (Adverse Discontinuance).

Nine days after issuance of the Adverse Discontinuance, PIRY filed a petition to reopen, seeking modification or clarification. PIRY asked the Board to issue an order prohibiting the Cities from removing the existing track on the Kellar Branch line until: (1) a state court issued an order adjudicating whether PIRY's contract to operate the line has expired, and (2) the current operator, CIRY, obtained authority from the Board to discontinue service on the line. By a decision served on November 18, 2005, the Board denied PIRY's petition on grounds that there was no need to reopen to grant the relief sought because CIRY had stated that it would not remove any track before it received discontinuance authority and because a court could interpret and/or enforce the contract without any further action by the Board. City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878 (STB served Nov. 18, 2005)

In the instant proceeding, PIRY filed another notice of intent to file an OFA under 49 U.S.C. 10904 to purchase all 8.29 miles of the Kellar Branch and requested certain financial information from CIRY. On September 15, 2005, CIRY filed a motion to reject PIRY's notice. On October 11, 2005, PIRY filed a motion seeking clarification of CIRY's notice of exemption and an order compelling CIRY to turn over the information that was sought. CIRY replied to PIRY's motion for clarification and to compel on October 17, 2005.

The Board, by an order of the Director of the Office of Proceedings served on November 21, 2005: (1) granted CIRY's motion to reject PIRY's notice of intent to file an OFA and, (2) denied PIRY's motion for clarification and to compel as moot.

In support of its petition for exemption, CIRY states that discontinuance authority is necessary to enable the Cities to convert the line into a recreational trail. CIRY adds that it will not need to operate in the future over the subject segment because the existing shippers will receive rail service from points north or south of the segment and are not on the portion of the line at issue in this discontinuance. It also notes that there has been no local traffic on the segment for more than two years and that overhead traffic can and will be rerouted.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving CIRY of the costs of maintaining and operating the segment [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. The shippers served by CIRY are aware of the relocation project, do not object, and will continue to be served from the north or from the south. No service has originated or terminated on the segment at issue in this discontinuance for over 2 years and overhead traffic will be rerouted. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board does not consider OFAs to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. To the extent that 49 U.S.C. 10904-05 apply to discontinuance proceedings, we will grant CIRY's petition for exemption from the requirements of those sections. The record here shows that an exemption from the OFA subsidy provisions is warranted, as all three existing shippers will continue to have rail service. Similarly, as this discontinuance will facilitate a community development purpose, an exemption from the public use provision at 49 U.S.C. 10905 is appropriate.

Finally, on December 20, 2005, nearly 3 months after the notice of exemption in this proceeding was served and 10 days before the deadline for the Board to issue a decision, PIRY filed a request to hold this proceeding in abeyance, pending compliance by CIRY with the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act, and the Board's rules at 49 CFR Part 1105 implementing those acts. CIRY replied on December 22, 2005. PIRY's request will be denied.

When it published the notice of exemption in this proceeding on September 30, 2005, the Board stated that its Section of Environmental Analysis had concluded that this action does not require the preparation of an Environmental Assessment (EA) because it determined that this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) and from historic reporting requirements under 49 CFR 1105.8(b)(3). Section 1105.6(c)(2) states that no environmental documentation normally will be prepared for any action that would not result in significant changes to carrier operations, i.e., changes that would not exceed the threshold levels identified in 49 CFR 1105.7(e)(4) and (5), regarding the amount of traffic that would be diverted from rail to motor carriage or the level of increase in rail or truck traffic. This discontinuance of service will not alter the amount of rail and truck traffic in the vicinity. PIRY has offered no support for a finding to the contrary. Moreover, the consequences of rerouting the existing traffic were considered in STB Finance Docket No. 34395 in an EA served on March 9, 2004.

The discontinuance of service over the line will not affect potentially historic sites or structures. Therefore, under 49 CFR 1105.8(e), no historic report is required. Moreover, as stated in Implementation of Environmental Laws, Ex Parte No. 55 (Sub-No. 22A), 7 I.C.C.2d 807 at 828-29, this agency ". . . can impose historic preservation conditions only to the extent the particular property is owned by the applicant carrier and has a sufficient nexus to the proposal under review." CIRY does not own any of these properties. Nor has PIRY even asserted, much less demonstrated, that CIRY's mere right to operate over the line constitutes a sufficient nexus to warrant the imposition of an historic preservation condition.

PIRY argues that, because the Cities plan to abandon service, salvage the track, and convert the corridor into a trail once CIRY's discontinuance is granted and becomes effective, the Board needs to undertake an environmental review of the Cities' actions prior to approving the discontinuance. PIRY makes this argument, notwithstanding the fact that the Board has no authority over the Cities, which acquired the line without agency authorization after it had been abandoned. Thus, an environmental review of any actions that the Cities may take with respect to the line would not inform the Board's decision regarding whether to approve or deny CIRY's petition for discontinuance of rail service—the fundamental purpose of NEPA. See 40 CFR 1500.1(c). PIRY points to agency precedent in which EA's were prepared in cases of discontinuance of freight service where the line would not continue to be operated. However, none of those cases involved lines that had already been authorized for abandonment.

Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PIRY's request to hold this proceeding in abeyance is denied.
2. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CIRY of its operations as described above, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).
3. Under 49 U.S.C. 10502, the Board exempts CIRY from the requirements of 49 U.S.C. 10904-05, as described above.
4. Petitions to stay must be filed by January 9, 2006. Petitions to reopen must be filed by January 17, 2006.
5. This exemption will be effective January 22, 2006.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary